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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 DANIEL KLEEGERG, et al.,

4 Plaintiffs,

5 v.

16 Civ. 9517 (LAK)

6 WENDY EBER, et al.,

7 Defendants.

Conference

8 New York, N.Y.
9 January 26, 2023
4:09 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 BROOK & ASSOCIATES, PLLC
Attorneys for Plaintiffs
15 BY: BRIAN C. BROOK, ESQ.

16 FARRELL FRITZ P.C.
Attorneys for Defendants
17 BY: FRANK T. SANTORO, ESQ.
KEVIN P. MULRY, ESQ.

18 HERBERT LAW
Attorneys for Defendants
19 BY: JOHN S. HERBERT, ESQ.
20 (Present Via Speakerphone)

21 WOODS OVIATT GILMAN LLP
Attorneys for Canandaigua National Corporation
22 BY: DONALD W. O'BRIEN, JR., ESQ.
23 (Present Via Speakerphone)

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(Case called)

THE DEPUTY CLERK: Counsel for plaintiff, are you ready?

MR. BROOK: Yes. Good afternoon, your Honor. Brian Brook for the plaintiffs.

THE DEPUTY CLERK: Counsel for defendant, are you ready?

MR. SANTORO: Yes. Good afternoon, your Honor. Frank Santoro, Farrell Fritz, PC, counsel for the Eber defendants.

THE COURT: Good afternoon.

MR. MULRY: And Kevin Mulry of Farrell Fritz, also for defendants. Good afternoon, your Honor.

THE COURT: Mr. Mulry.

THE DEPUTY CLERK: Counsel for defendant Canandaigua. Counsel, are you on the phone? Are you ready?

THE COURT: Apparently not.

THE DEPUTY CLERK: They were there. Shall I --

MR. O'BRIEN: Your Honor, this is Don O'Brien calling in. I'm representing Canandaigua National Bank.

THE COURT: And in your view, are they still in this case or not?

MR. O'BRIEN: Well, your Honor, my understanding is, from reviewing the various claims and counterclaims, there is relief that's being sought that could affect Canandaigua National Bank, particularly with respect to some further

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1 proceedings in the surrogate court, and, of course, your Honor,
2 we do have a settlement agreement with the plaintiff when we
3 were let out of the case, based on their claims, and so we are
4 in fact interested in the outcome with respect to that matter
5 as well, which is reimbursement of attorney's fees.

6 THE COURT: Well, my question was actually a little
7 different than whether you're interested. Are you a party to
8 this case today?

9 MR. O'BRIEN: We still have a -- an interpleader claim
10 which I believe has not been resolved, and so therefore, I
11 believe we are, although every notice I get says that I've been
12 terminated.

13 THE COURT: And you didn't show up at the trial.

14 MR. O'BRIEN: I did not, your Honor.

15 THE COURT: Okay. That has whatever effect it has,
16 which I'm not going to decide now.

17 Now, Mr. Brook, I have your letter, I have
18 Mr. Santoro's letter. Do you have any response to
19 Mr. Santoro's letter?

20 MR. BROOK: I mean, a lot of the letter doesn't say
21 all that much other than throwing out terms like Princess Lida
22 and stuff like that. I just want to clarify what we're asking
23 the Court to do. We're not asking the Court to step into the
24 shoes of the missing surrogate. All we're asking --

25 THE COURT: Is there a missing surrogate?

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1 MR. BROOK: From my understanding -- I'm not the
2 estate lawyer, but the docket shows no acting surrogate was
3 appointed even after the surrogate in June of last year
4 referred the matter to the administrative judge for an
5 assignment. So I spoke to my estate lawyers and they talked to
6 someone and confirmed that no acting surrogate had yet been
7 appointed.

8 THE COURT: But Mr. Santoro, on what basis do you say
9 that there is or was an acting surrogate?

10 MR. SANTORO: Any application would require
11 adjudication by an acting surrogate, in the event there was a
12 recusal by the sitting surrogate, elected by the folks of
13 Monroe County.

14 THE COURT: So you're saying that there's an acting
15 surrogate not because one has been appointed but because in
16 your view, somebody would have to be appointed if something was
17 before the surrogate's court requiring decision; is that right?

18 MR. SANTORO: Not quite, your Honor. My understanding
19 is that surrogate Ciaccio, if I'm pronouncing his name
20 properly, is no longer recusing himself with respect to the
21 estate of Lester Eber but during any period of time --

22 THE COURT: How do we know that?

23 MR. SANTORO: That's what I've been informed by estate
24 counsel in Monroe County.

25 THE COURT: Is there anything on the record that he

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1 recused himself?

2 MR. SANTORO: Yes, there is.

3 THE COURT: Is there anything on the record that says
4 he unrecused himself?

5 MR. SANTORO: That was with respect to a proceeding
6 that was brought for fees, but no, the answer is no.

7 THE COURT: So there is no acting surrogate at the
8 moment. And there --

9 MR. SANTORO: Every county has an acting surrogate.
10 Once an application is made in the surrogate's court, if the
11 sitting surrogate has recused him- or herself, it's referred to
12 the acting surrogate. That's my understanding of how it works.

13 THE COURT: And that's where, in the Surrogate's Court
14 Procedure act or somewhere else?

15 MR. SANTORO: I think it's a function of the
16 administrative judge in each county taking cases in the
17 surrogate's court, whether they're administrative cases or
18 actual litigations where they're contested matters, and once an
19 application is made, if the surrogate has recused himself or
20 herself, it is then referred to an acting surrogate.

21 THE COURT: Is there anything that's been referred to
22 an acting surrogate?

23 MR. SANTORO: Not that I've seen, your Honor.

24 THE COURT: Because there's nothing pending, right?

25 MR. BROOK: Your Honor --

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1 MR. SANTORO: Well, that's an interesting question. I
2 mean, the administration of the estate of Lester Eber is
3 ongoing and it's subject to the surrogate's court's
4 jurisdiction, so any application that's made that requires
5 adjudication must be made in the surrogate's court.

6 THE COURT: So I take it the answer is no.

7 MR. SANTORO: If --

8 THE COURT: You're telling me that if something
9 happens, then something else happens, but nothing has happened
10 yet, right?

11 MR. SANTORO: Nothing has happened that requires
12 adjudication.

13 THE COURT: Okay. Thank you.

14 Back to you, Mr. Brook.

15 MR. BROOK: Yes. Just on that point, so there was a
16 petition filed in early December for the payment of fees that
17 was withdrawn on the last day of the year. And in the three
18 weeks or so after that was filed, there was still no acting
19 surrogate who had been appointed by the court, so I don't know
20 what Mr. Santoro is referring to there. But it doesn't really
21 matter, other than the fact that what's been going on there, or
22 has been going on with the estate, sort of gives additional
23 concern to my clients about the state of Eber Connecticut,
24 because that's what we're really here about is the nominal
25 defendant, Eber Connecticut, which is not a party to the

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1 surrogate's court. So this has nothing to do with the
2 jurisdictional limitations of this court, or whatever it is
3 that they're referring to there. We are just asking for
4 information to be disclosed pending a decision, because that
5 asset is likely going to be the only asset left in Mr. Lester
6 Eber's estate at the end of the day, so it's all the more
7 important to preserve its value.

8 THE COURT: Have you asked the other side for the
9 information you want?

10 MR. BROOK: Yes, your Honor, and we were getting
11 information and regular updates I thought for the last year.
12 We had, you know -- I think the bills that they submitted show
13 that they billed over \$50,000 in the first -- in December,
14 January, February, after the trial and all the briefing was
15 over, because we were talking so much, we were exchanging
16 information, and we had an agreement that anything else
17 happens, any employees give notice of termination or thinking
18 about leaving or any suppliers dualing them -- that's always
19 been one of the main points of concern because, you know, I've
20 talked to the potential buyer Andy Eder's lawyers; that's a
21 factor for them that would affect the price that they pay.
22 They were supposed to share that, and we found out just right
23 at the end of the last year, I believe it was, Mr. Kleeberg,
24 who is in the industry, heard from someone, and then we
25 confirmed with Andy Eder, who had heard this information as

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1 well -- or his attorneys, rather -- that the second-largest
2 supplier had dualled them months ago.

3 THE COURT: You wrote me a letter nine days ago saying
4 you weren't getting information. Have you gotten it in the
5 interim?

6 MR. BROOK: No, your Honor, because the information
7 that we're aware of, we already got on our own. The issue here
8 is, you know, if there's anything else that hasn't been
9 disclosed and really going forward pending a decision, you
10 know -- and in particular, the thing I didn't want to put in
11 the letter, but it's our understanding and sort of from rumors
12 and such -- which is apparently how this industry works -- that
13 a number of senior Eber Connecticut -- or Slocum & Sons, as
14 it's called -- employees are actively looking for other
15 employment. It's our understanding that Wendy Eber long ago
16 said that if and when my clients get control of the company, a
17 lot of people are going to lose their jobs, and so, you know, I
18 don't -- again, I didn't hear this myself. That's what the
19 word on the street is; the sort of attitude of, if I can't have
20 it, no one can. And that's what we're concerned about is, will
21 it happen again. And it already did happen --

22 THE COURT: I suppose if she's done that, she's wide
23 open to liability for another reason.

24 MR. BROOK: And the last thing we want to do, your
25 Honor, is file another lawsuit against Wendy Eber.

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1 But more importantly, you know, those employees are
2 the key part of this company. The relationship that they have
3 with suppliers are what makes sure that those suppliers
4 continue to use Eber Connecticut as their exclusive
5 distributor. So we got word at the end of last year, for
6 example, that a key employee -- we didn't know who, Wendy
7 wouldn't share the information, wouldn't let us talk to him,
8 but -- had given notice. And essentially, you know, our hands
9 were tied, based upon that information. We don't want that to
10 happen going forward.

11 I mean, in December or January last year, whenever it
12 was that we had heard that -- so I'm referring to December '21
13 or January '22 -- you know, we were expecting, you know, based
14 upon what your Honor had told us, a decision any day, and we
15 didn't want to bother this Court with something that --

16 THE COURT: I wish I could have given it to you.

17 MR. BROOK: But I think, you know, at this point we --
18 you know, we understand your Honor is extremely busy. We just
19 want to make sure that however much longer it takes, that my
20 clients can try to do something, if they can, to intercede in
21 the event a key employee gives notice.

22 We've also talked about the possibility of having a,
23 you know, a letter from my client to employees, just basically
24 undoing whatever may have been said by Wendy Eber, reassuring
25 employees their jobs are safe, we are not planning on having

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1 anyone terminated, you know, just -- we want to be able to do
2 something to avoid a potential destruction of the value of this
3 company.

4 THE COURT: Mr. Santoro, what about it?

5 MR. SANTORO: First, your Honor, on the question of
6 whether the plaintiffs asked the defendants for the information
7 that's being requested, I have not spoken or heard from
8 Mr. Brook since our last conference in September.

9 THE COURT: I read your letter.

10 MR. SANTORO: Okay. Before that, the idea that there
11 was an agreement in place that we would provide some kind of
12 information dates back to more than nine months ago, when the
13 parties were still involved in settlement discussions, which
14 have long ceased. That's the first thing. So if Mr. Brook had
15 requested information rather than writing a letter to the
16 Court, we would have been happy to have a conversation with him
17 about the nature of the information that he's seeking.

18 THE COURT: Well, how about now?

19 MR. SANTORO: Well, how about now. We can start with
20 CDI, which is this dualing that occurred. Mr. Brook just told
21 you about the dualing of Eber Connecticut's second-largest
22 supplier. What he didn't tell you is that CDI dualled every
23 supplier, every distributor that they had in Connecticut.
24 There is nothing about --

25 THE COURT: Did you tell him that?

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1 MR. SANTORO: No, because he didn't ask me, your
2 Honor.

3 THE COURT: You've had his letter for nine days. Why
4 didn't you tell him?

5 MR. SANTORO: There's been no communication.

6 THE COURT: Why not? Why didn't you pick up the
7 phone? I'll grant you, maybe he should have picked up the
8 phone. Why can't you pick up the phone?

9 MR. SANTORO: Your Honor, because when we have
10 provided information to Mr. Brook in the past, he has acted in
11 a way, in terms of communicating with Eber Connecticut's
12 competitors in Connecticut, that is irresponsible. So we are
13 reticent to provide the kind of information that he's asking
14 for. Nevertheless, we have in the past.

15 THE COURT: You know what it's beginning to sound
16 like; it's beginning to sound like what you need is a receiver.
17 And sooner rather than later. Doesn't it? If you guys can't
18 play in the sandbox in a responsible way like two grown
19 6-year-olds, don't I have to get an adult in here?

20 MR. SANTORO: Your Honor, the business of Eber
21 Connecticut under Wendy Eber's administration, under her
22 stewardship, has performed exceptionally well. The idea that
23 we're going to replace Wendy Eber with a receiver --

24 THE COURT: If you don't yet know that your client is
25 in the middle of the Great Lakes on very thin ice, you haven't

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1 been paying attention, because I have a very negative view of
2 her credibility and her even-handed administration of the
3 assets that have been subject to her control or influence. And
4 I'm the finder of fact. Getting the message?

5 MR. SANTORO: Yes, your Honor.

6 THE COURT: Good. So maybe you'll be a little bit
7 more forthcoming and maybe the two of you can do what you
8 should have done -- what is this, we're in 2023? -- seven years
9 ago when this case was filed. And I don't remember who the
10 lawyers were then, but I remember talking to both of them at
11 the beginning of it and telling them that from my days in
12 practice, there is nothing worse than a family litigation over
13 a business, because at the end, everybody loses except the
14 lawyers, and I urged them to sit down and settle and offered to
15 assist personally in doing that if they were interested, and
16 the answer I got back was neither side was interested. Get
17 with it.

18 Now I expect not to hear about this fight over
19 information again. In the meantime, I'm prepared to rule on
20 two of the issues that are pending before me.

21 Very late in the day, memory serves after the trial
22 was over, the defendants suddenly asserted the contention that
23 under something called the Princess Lida doctrine, this Court,
24 where we have been litigating for the last seven years, didn't
25 have jurisdiction and somehow there was a new *res judicata*

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1 argument. I'm going to assume for purposes of my remarks that
2 a reader of them will be up to date on what has happened in the
3 Surrogate's and Supreme Court in Monroe County. I don't think
4 that the historical facts are in any way disputed, and I'm not
5 going to take the time to summarize them.

6 But let me start with the Princess Lida doctrine,
7 which the defendants claim ousts this Court of federal subject
8 matter jurisdiction. The Princess Lida doctrine prevents
9 federal courts from adjudicating claims to a res that is
10 currently under the control of another court. It applies when
11 there's prior pending litigation and two conditions are met:
12 first, both actions must be *in rem* or *quasi in rem* in nature;
13 second, the relief sought would require the second court to
14 exercise control over property already under the jurisdiction
15 of the first court.

16 Now the first thing to be noted is that in the Second
17 Circuit, which is where we are located, the Princess Lida
18 doctrine has nothing to do with subject matter jurisdiction.
19 The Second Circuit has said that, among other places, in the
20 *Carvel v. The Thomas and Agnes Carvel Foundation* case,
21 188 Fed.3d 83, it has to do with abstention, which is a
22 discretionary doctrine. So the issues for me to determine are
23 whether the prerequisites to the Princess Lida doctrine are met
24 in this case and, if they are, whether I am obliged by
25 principles of abstention to defer to the courts up in Western

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1 New York.

2 First of all, the Princess Lida doctrine doesn't apply
3 at all in this case. The key issues in this determination are
4 timing and whether both actions are *in rem* or *quasi in rem* in
5 nature. The timing of the filing of this action precludes any
6 need or any justification for Princess Lida abstention. The
7 purpose of the Princess Lida doctrine is to protect one court's
8 jurisdiction over a res property from another court's
9 subsequent attempt to exercise jurisdiction over the same res.
10 The doctrine cautions courts to abstain to avoid contradictory
11 determinations of property rights.

12 The Surrogate's Court was not exercising jurisdiction
13 over the trust in this case when this action was filed. The
14 defendants have contended, first of all, that the probate of
15 Allen Eber's will, 53 years ago, conferred continuing
16 jurisdiction over the res on the Surrogate's Court in Monroe
17 County. But an exercise of jurisdiction in the relevant sense
18 would require that there be pending in the first court, at the
19 time of the filing of the second action, some active dispute,
20 at a minimum. The mere existence of power to supervise the
21 administration of a trust doesn't mean that jurisdiction in
22 fact is being exercised. There have to be affirmative steps by
23 the trustee or the court for jurisdiction to attach to the
24 trust corpus. There were no actions open in the Surrogate's
25 Court, and there were no such actions at the time this case was

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1 filed. Indeed, by the time this case was filed, the
2 Surrogate's Court had terminated the testamentary trust.

3 The defendants cite an unreported and nonprecedential
4 case, *Mercer v. Bank of N.Y. Mellon*, 609 Fed. App'x 677, for
5 the proposition that the Surrogate's Court had continuing
6 jurisdiction over the trust. *Mercer* expressly did not propound
7 a view on the minimum amount of activity that would have been
8 sufficient to give the Surrogate's Court supervisory control
9 over the trust. In *Mercer*, there was a trial pending in the
10 Surrogate's Court. When the federal case was filed here, there
11 were no proceedings in the Surrogate's Court.

12 Secondly, I don't need to determine whether any of the
13 claims in this case were *in rem*, *quasi in rem*, or *in personam*,
14 because at least some of the plaintiff's claims here are *in*
15 *personam*, and they would not be foreclosed even if the Princess
16 Lida abstention were appropriate with respect to others. And
17 not all claims relating to trust administration and asset
18 distribution are *in rem* or *quasi in rem*. *In rem* jurisdiction
19 involves cases where property actually has been seized under
20 judicial process before the second suit is instituted. *Quasi*
21 *in rem* claims are brought to marshal assets, administer trusts,
22 or liquidate estates, and if suits with similar nature were to
23 give effect to its jurisdiction, the court must control the
24 property. Claims seeking to contest management or to effect a
25 distribution of property may be *in rem* or *quasi in rem*, but

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1 those merely seeking an *in personam* judgment declaring the
2 plaintiff entitled to receive from the fiduciary an interest in
3 a trust estate are not.

4 In *Lefkowitz v. Bank of New York*, which is at
5 528 Fed.3d, the Second Circuit held that claims for breach of
6 fiduciary duty, aiding and abetting breach of fiduciary duty,
7 fraudulent misrepresentation, and fraudulent concealment are *in*
8 *personam* because for each of those claims, the plaintiff seeks
9 damages from the defendants personally rather than assets or
10 distributions from an estate. Moreover, in addressing those
11 claims, the federal court will not be asserting control over
12 any res in the custody of a state court. In this case, the
13 plaintiffs do not require this Court to take control of any res
14 property. Even if there did, there would be an abundance of *in*
15 *personam* claims.

16 In any event, the defendants' arguments that all of
17 plaintiffs' claims should be dismissed under the Princess Lida
18 doctrine because the claims all derive from their equitable
19 interest in the trust res as trust beneficiaries is absolutely
20 clearly wrong.

21 Plaintiffs also bring claims derivatively on behalf of
22 various Eber corporations. In any event, defendants have
23 forfeited any claim to abstention by actively participating in
24 this suit for years without raising the Princess Lida argument
25 until after the conclusion of the trial. As I've discussed

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1 already, the Princess Lida doctrine is a prudential rule of
2 abstention. Claims to abstention, even mandatory abstention,
3 can be waived. Defendants failed to plead or move to dismiss
4 on the basis of the Princess Lida abstention doctrine at the
5 right time, and they can't avail themselves of the Court's
6 discretionary power to abstain at this late date.

7 There is also an argument that the proceedings that
8 led to the Surrogate's Court 2017 order, which, if memory
9 serves, as was the order to allow the Canandaigua National Bank
10 to be done with its service as a trustee, placed all issues and
11 claims pertaining to the trust before the Surrogate's Court and
12 that this Court therefore is precluded from hearing any of
13 plaintiffs' claims as a matter of *res judicata*. That argument
14 is dead wrong for two reasons:

15 First, *res judicata* is an affirmative defense that
16 normally must be pleaded in a timely manner or it's waived.
17 Contrary to their assertion in the post-trial briefs, the
18 defendants did not plead *res judicata* on the basis of the 2017
19 Surrogate's Court accounting order in their amended answer.
20 The reference there to *res judicata* pertained only to the
21 Monroe County Supreme Court decision in 2012 regarding the
22 commercial reasonableness of Alex Bay's foreclosure on Eber
23 Metro, which touched only on one of the many issues addressed
24 at trial. Any claim the defendants might have made under *res*
25 *judicata*, any other claims, therefore, are gone. They were

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1 history.

2 Even if the defendants hadn't waived the claim, the
3 resolution of the Surrogate's Court accounting proceeding would
4 not preclude this Court's adjudication of the claims at issue
5 here, and the rationale is very similar to my views on the
6 Princess Lida doctrine. *Res judicata* bars subsequent claims
7 where three things are true -- there's a previous adjudication
8 on the merits; the previous action involved a party against
9 whom *res judicata* is invoked, or someone in privity with that
10 party; and the claims involved were or could have been raised
11 in the previous action. The claims before me, at least many of
12 them, do not concern the trust res, its management, or the
13 distribution of shares. Instead, to the extent plaintiffs'
14 claims concern the trust, they arise from breaches of fiduciary
15 duty and other *in personam* theories. As the accounting order
16 is not a previous adjudication on the merits, there's no
17 privity between the plaintiffs and CNB, which sought the 2012
18 accounting, and those claims could not have been raised in the
19 previous action. The basic requirements of *res judicata* have
20 not been satisfied.

21 Now I will possibly include a further discussion of
22 the baselessness of the jurisdictional and *res judicata* claims
23 when I issue a final decision here, but I may not. My remarks
24 here are I think reasonably comprehensive on that point, and
25 I'll just see how much time I have and whether I think it

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1 worthwhile to provide all the citations and so on that a
2 full-blown, for-publication opinion would include. But I
3 consider those arguments as very belated, insufficient
4 afterthoughts, after a trial in which the defendants saw which
5 way the wind was blowing, and they're just without merit.

6 So now move along, please, folks, in the direction
7 that is in all your interests, and I will move along as time
8 permits, with a view toward trying to reach a final conclusion,
9 in fully written form.

10 Anything else, folks?

11 MR. BROOK: Not from me, your Honor. The only thing I
12 would just say, so that your Honor's expectations are clear --
13 I mentioned this in the letter last September -- is, this case
14 is incredibly hard to settle because we can't just do it for
15 money. We're talking about a company here. And so the
16 challenge is, you know, in particular things like what kind of
17 release can we get, can we see any of the books and records
18 before we grant a full general release to the defendant, and,
19 you know, the insistence on a full general release, essentially
20 buying a company for the claims, is something that is very
21 difficult. I mean, my client Dan Kleeberg's son Justin
22 Kleeberg here, he's the head of M&A at the investment banking
23 division for a bank here in New York. He's one who would -- as
24 I tell my clients again and again, you cannot essentially take
25 control of a company and have no recourse if she's embezzled

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1 \$5 million or something like that. So that's -- the absence of
2 being able to just pay cash is, in my view, an insurmountable
3 hurdle, but I will go back to it and see if we can maybe get
4 them to reconsider.

5 THE COURT: Well, look, more complicated transactions
6 than this have been done, and if Mr. Kleeberg is what you say
7 he is -- I have no reason to doubt it -- he's a person who
8 understands. Making deals is hard, and if you want a mediator
9 here, I'll appoint one. Or you can go back to Judge Parker.
10 But if you would prefer somebody else, I have a candidate. Not
11 that you have to take my candidate. You can find your own.
12 There are all sorts of possibilities.

13 MR. BROOK: I'll speak with my clients, but when I
14 last did, they are of the view that we've exhausted all of our
15 efforts in this -- and just to also correct your Honor's
16 understanding, when we got assigned to this case -- I was here
17 from the beginning -- unlike these guys, we never told your
18 Honor we wouldn't talk about it. Your Honor had the dog bite
19 incident and we never actually met, so we got quickly assigned
20 over to Judge Parker and we did several settlement conferences
21 with her over the years.

22 THE COURT: Let's not have another dog bite incident
23 to try to promote you to settle. Now obviously you have a
24 right to a decision, and I will give you a decision. And
25 sometimes I can do it very quickly and sometimes it's harder.

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1 It's not an excuse, but the volume of evidence that was dumped
2 in -- and I don't use that pejoratively, it was nonjury and I
3 invited it in a sense, by doing it the way we did it -- is
4 huge, and it takes a lot of uninterrupted time to get my head
5 around all of it, and every time I get distracted on some other
6 emergency for a week, I've taken two steps forward and I take
7 one and a half back. And I acknowledge that it would have been
8 better if I had gotten this done a long time ago. I'm furious
9 with myself over it. But that's not getting it done. So I'm
10 working away.

11 MR. BROOK: Thank you, your Honor. And certainly if
12 there's anything the parties can do to assist your Honor, we're
13 open to that. And my clients are even open to -- I know this
14 is a very unusual thing I'm about to say. If your Honor has
15 any particular issues that are creating trouble, we would
16 consider dropping --

17 THE COURT: It's not the law that's giving me any
18 problems here. I can handle the law of the state of New York.

19 MR. BROOK: All right.

20 THE COURT: Okay. Mr. Santoro, anything else?

21 MR. SANTORO: Nothing, your Honor. Thank you.

22 THE COURT: Okay. Thank you.

23 MR. BROOK: Thank you.

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